

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

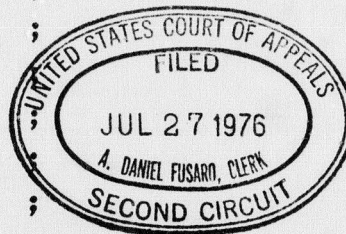
ALFONSO F. BRUSCHI

APPELLANT

-V-

SECRETARY OF HEALTH EDUCATION  
AND WELFARE

APPELLEE



BRIEF & Appendix

MEMORANDUM BRIEF OF ISSUES  
AND EVIDENCE IN SUPPORT OF  
THE PLEADINGS OF THE  
APPELLANT

SIRS:

I Alfonso F. Bruschi the Appellant in this Appeal before this court, do pray for the indulgence of the court as I am acting as my own attorney, and to state that I am a layman and ask the court to direct me in the various aspects and tenets of the legal procedures of the Law And courtroom procedures and practices, the issues are that I am presently disabled and that I cannot be gainfully employed, also that I was disabled under the deadline when I last met the earnings requirements of the social security act as amended, March 31, 1972.

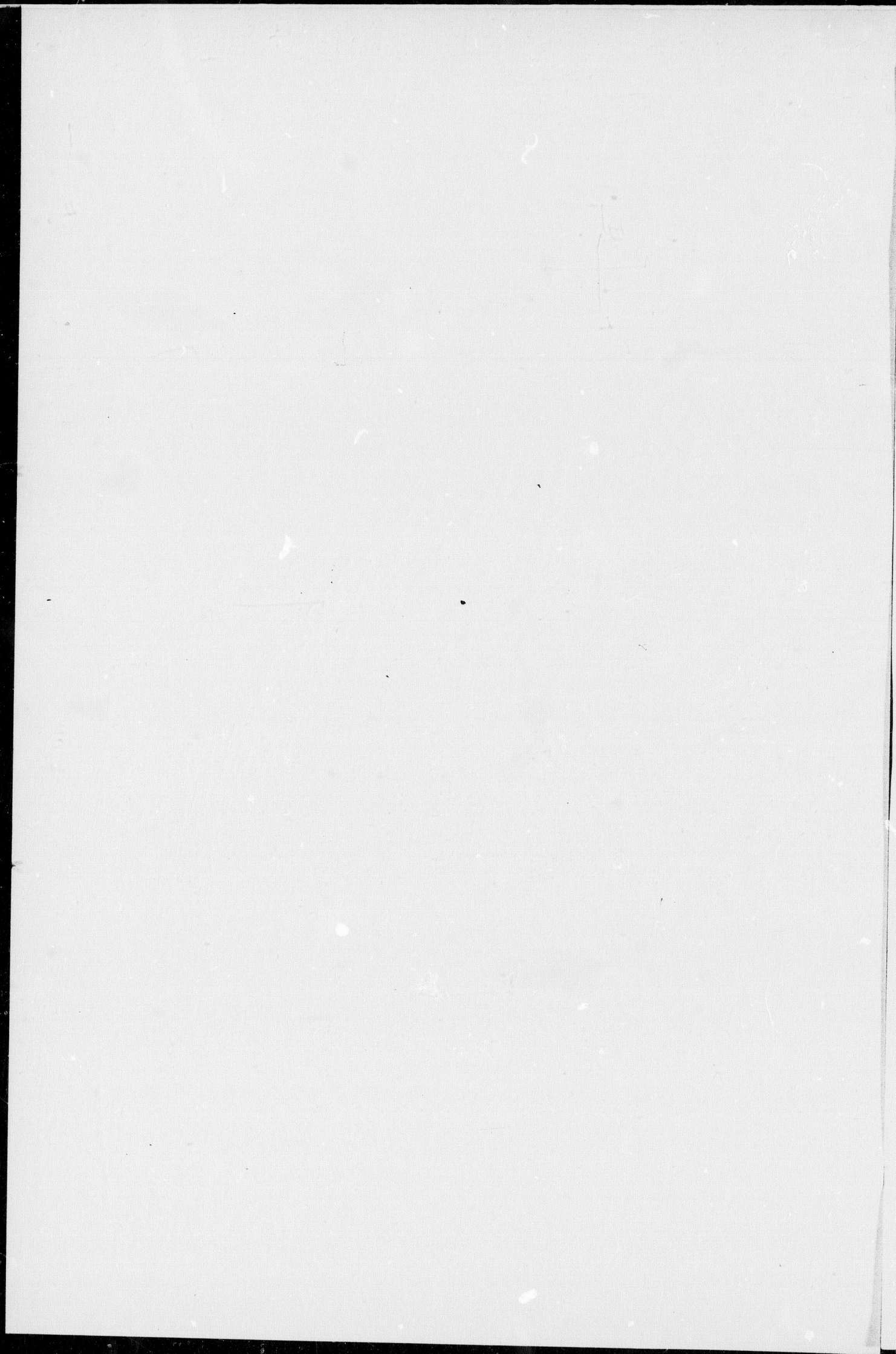
The evidence we are submitting to the court will show by clinically proven and laboratory proven reports which in conjunction with letters from various physicians who were treating me and still are treating me, plus the biopsy reports from the V.A .Hospital of New York, will show that the disabling condition as defined by Law was in fact a condition I had prior to the date I last met the earning requirements of the Social Security Act as Amended March 31, 1972.

APPLICABLE STATUTES

SECTION 223 of the Act, 42 U.S.C. :423 provides that:

- (a) (1) Every individual who
- (a) is insured for disability insurance benefits (as determined under subsection (c) (1) of this section)
- (b) has not attained the age of sixty-five
- (c) has filed application for disability insurance benefits, and
- (d) is under disability (as defined in subsection (d) of this section shall







- (d) be entitled to a disability insurance benefit . . . ending with the month preceding . . . the third month following the month in which his disability ceases. . . .

\* \* \*

- (d)(1) The term "disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted for a continuous period of not less than 12 months . . . .

\* \* \*

- (2) for purposes of paragraph (1) (a) --  
(a) an individual . . . shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

\* \* \*

- (3) For purposes of this subsection, a "physical or mental impairment" is a impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

\* \* \*

- (S) an individual shall not be considered to be under a disability unless he furnishes such medical or other evidence of the existence thereof as the Secretary may require.





On July 21,1975 I filed a complaint against the Secretary of Health, Education and Welfare, in the United States District Court, for the Southern District of New York,Civ. 75-4639 and it was placed on the calendar to be heard before the Honorable Judge Milton Pollack, of the United States District Court of the Southern District of New York.

The 21 day of April was set for hearing and oral argument on the merits of the case and Judge Pollack reserved decision.

On April 30,1976, Judge Pollack issued a Memorandum Judgement of Dismissal of my complaint.

Then on June 1,1976 I made a motion before Judge Pollack to Proceed on Appeal in Forma Pauperis which was granted on June 2, 1976, "No objection, but utterly devoid of Merit.

Then on June 21,1976 I submitted documents in the form of Laboratory reports, and a letter from Dr. Robert C. Atkins, plus the Biopsy report of 11,18,1974 Veterans Administration Hospital of New York City, and the Biopsy report of New York Hospital of New York. The laboratory reports and the doctors letter show that I had a disabling condition going back to 1971 this then was new evidence that had not been previously been submitted because I had no knowledge of it prior to the biopsy of the Liver that was taken in May 5,1976, at New York Hospital by Dr. Harvey Klein, of 525 East 68 Street, New York City,N.Y.

Judge Pollack reviewed the new evidence and he ruled on June 22, 1976, "Treating this as a motion for re-argument the same is in all respects denied" so Ordered Milton Pollack.

Now having a ruling denying my requests both for review and dismissal of the Secretary's denial of my claim for disability and also a ruling my motion for re-argument I now address myself to the Appeals Court to hear my Appeal for relief and judgement for me on the merits of this plea, to grant me relief by the finding that I was disabled prior to March 31,1972, based on the evidence now being presented.

I will now briefly as I can document a case that is complex in that it involves a great deal of Medical Records and testimony and analysis, but it also shows that part of a Medical story that is elite in the sense that it shows a man being penalized for not submitting Medical evidence he had no knowledge of, because it was not diagnosed properly and also because it was not brought to his attention even though it was serious enough that it needed treatment which was denied for at least 6 years, this then made it difficult for me to obtain necessary medical treatment, and it also denied me relief in obtaining disability benefits.





On February 6, 1974 a Medical Analysis was issued by the Appeals Council, of the Social Security Administration, the Analysis was by a Dr. Sidney I. Green, in his Analysis Dr. Green described a man being evaluated primarily for pre-dominant emotional problems, not severely disabling because the records that he was reviewing reflected that pattern, and Dr. Green further states that he could not see any significant evidence of Hypoglycemia, or of any significant evidence of Menieres vertigo that would be considered disability according to the rules set forth by the Social Security Laws As Ammended.

Then on October 18, 1974 I submitted further evidence that documented severe Alimentary Hypoglycemia, but at that time the Liver condition, was not considered as being serious in that the Liver Scan was normal, and that the liver on palpation was also not enlarged, consequently upon discussion with the doctor who was taking care of me Dr. Dreyfus the liver biopsy was not done, however in November of 1974, I had the Liver Biopsy done at the Veterans Hospital 23 Street, and first Avenue, N.Y.

I was told that I had a Hepatic liver condition and that they did not consider the condition serious enough that it required treatment at that time, later I found out that the condition was serious at that time and that I should have been treated then but this was a consistent pattern of the V.A. Hospital in treating me, the condition was apparent to them as far back as 1969 which evidence I am submitting to prove that this is so.

IN all of the evidence that Dr. Green reviewed there was no mention of any liver abnormality, nor was it ever any part of the records that make up the Administrative Record of the Administrative Proceedings that were of record, the condition was ignored and never brought to light until the Mt. Sinai Hospital of New York, included it in their summary, and then it was noted in the summary of New York Hospital in 1974, up until then it was never a factor in any of the diagnosis or medical examinations, and we now find out that it was a Major factor in the ailments that I suffered from.





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It has been established that I suffer from Menieres and the question was did the Menieres disable me so that I could not be gainfully employed, also it is documented that I have severe Hypoglycemia and that it was primarily Alimentary Hypoglycemia, but again the question arose did it disable me within the meaning of the Social Security Laws as Ammended.

Now we have the final link, Cirrhosis of the Liver documented by Live Liver Biopsy's V.A. Hospital New York 23 Street, on 11-18-74, and New York Hospital, of 525 East 68 Street, N.Y. May 7, 1976 this then was the basic cause of all the symptoms that were creating difficulty in diagnosis and prognosis the related psychotic manifestations often ascribed to anxiety depression, Hypochondria, Psychoneurosis, and functional character complaints, these are the previous diagnosis given on the basis of the records submitted and the summaries submitted.

The evidence that I am submitting will prove by clinically documented laboratory reports, and Medically proven testimony substantiating, that I was disabled prior to March 31, 1972 the date I last met the earning requirements of the Social Security Act laws as Ammended.

The Investigation Reprot of the V.A. Hospital, 23 Street and First Avenue, New York, Dr. Kessler, May 1, 1975 state for the first time that I have a condition that is disabling the Menieres the reprot is EX-A-14b and Par 6 page 3 states as follows, "Clearly it is difficult to separate the patients hearing disability and potential for Labyrinthitis, from his post-prandial Pyloroplasty and Vagotomy symptoms".

They also state in Par 7C page three, " the patients current symptoms of postprandial palpation, and discomfort are best explained by a mild dumping syndrome, and the occasional Hypoglycemia episodes by diagnosis of Alimentary Hypoglycemia, both well established complications of Gastric Surgery (Vagotomy and Pyloroplasty) generally these symptoms are not severely disabling but in this patient may be complicated by Labyrinthian and auditory disease".

This is the first time that the V.A. gives an opinion on the well known fact that I have Menieres and Hypoglycemia of a disabling nature, prior to this report they never mentioned it in any of their diagnosis or medical reports or summaries..





The reason I stated that it was difficult for me to get treatment was that I had no evidence in the form of Medical Records that showed that I was suffering from any condition that was documented as needing treatment, take the question of the Menieres, I had doctors that treated me and told me that I had Neuralgia, in the Medical review of Dr. Green TR256 to 259 he Par 1 Tr 258 "I do not find any evidence really for a ~~re~~ significant vertigo syndrome, and there is very little documentation for nystagmus or for cerebellar types of problems; the gait is generally good; this is the type of problem that I faced when I went to another Physician, I had to explain what I had previously been treated ~~for~~ and when they found that I had been treated for whatever their specialty was for example an ear doctor, then they wanted to know what treatment I had received, when they had that information they as a rule changed in their treatment of me as a patient, because they did not want to get involved, and who could blame them, here I was presenting myself for treatment to a doctor who was supposed to diagnose what I had, and then to pass judgement on what had been done prior to their treating me this was too much to ask of any doctor and consequently they did not comment on the fact that I was disabled, this also affected their treating me for the conditions, because as it was stated by Dr. Green in his analysis Tr.256 Par 1 "I am unable to justify the length of admission on the basis of the conditions for which he was treated".

Also in Dr. Budabin's letter Tr.337 Par 5 " As Dr. Green hinted, the patients complaints are functional. The treatment he has secured over the past years have represented a series of destructive mutilating procedures of doubtful medical benefit at least one might note that the patients symptoms were never alleviated. Note that Dr. Budabin also at that time was not aware of the Liver Condition.

This then was a report from another source which was chosen by the attorney that I had at that time, Barry Leighton Esq. who had selected Dr. Budabin to review the records, that we had at that time, and these records again as I have stated before showed a pattern of a man suffering from Psychological problems and this is carried forth even in the report of the Psychiatric consultant Dr. Mari a Fuchs, Tr345 here is added another dimension "Hypochondria". -6-

\* Hereafter, references to "TR." are to the Transcript of the prior administrative proceeding, a certified copy of which has been filed.





Thenas I have stated before and demonstrated by these few examples it has been difficult for me to get adequate treatment because I have had much too much treatment of the wrong kind over the past 7 years, and I am fortunate that I inherited a strong constitution otherwise I fear it would have been fatal before this, now in the evidence that I am presenting there is demonstrated and proven by clinically tested laboratory reports and the medical testimony of the doctors show that I had a bad condition disabling me which goes back to 1969, consequently I was disabled before the date that I last met the earnings requirements of the Social Security Laws as Ammended, there are numerous other arguments that I could submit but it would entail my writing a brief which would be at least 100 pages long, and this is not in my estimation a brief that would explain the case any better that that which I am submitting, in much shorter form. The rest of the case can be argued in court depending on what the Secretarys representatives, require by their response.

This then is my brief as I have been able to put it together, the question is was I disabled before the time limit for my eligibility expired, and not was I able to be employed in any form or manner. this was never a point of argument that I had intended to raise, and I do not see the point being raised by other parties, I maintain that I was completely disabled from performing any gainful employment ~~not~~ only light work which I knew I was capable of performing, then this closed brief is ended as I have stated my case as briefly as possible and as intelligible as possible.

*Alfonso F. Bruschi*

Alfonso F. Bruschi Appellant